XII-189 (Jail) C J.P.R./9-94

CF0000059932

(2) CA 1686/96

APPEAL OF PRISONER

No रपट एफ.के.-28/95 Name विहारू

Father's name मंहेरा,

Residence मु०-सामापानी, नीलपरा आरक्षी केन्द्र करखा बिलासपुर Age 34 वर्ष

Sentenced to ~~आजीवनकारावास एवं 200/-रु०~~ on 17-9-96

Under Section 302 भा०दं०वि० by I A-D-J- B.S.P-

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date on which copy received 17 सितम्बर 1996

3 Date on which Appeal sent No-230 ecral96 Date-25-9-96

4 Whether the prisoner wishes to be represented or not.

No एजि/क्रि.अपी.नं-1741/54 Name विहारू पि. महेरा

Confined in द्वितीय श्रेणी जिला Jail बिलासपुर (मध्यप्र)

No. 230 Dated 25-9-1996

Forwarded to the रजिस्ट्रार उच्च न्यायालय मध्यप्रदेश जबलपुर

together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent

Jail

Date of receipt in Office

Date of receipt of record to accompany the

Memo of Appeal to the Appellate court

No Dated 199

Forwarded to the

Date of receipt in Appellate court

Court of Madhya Pradesh
JABALPUR
19 SEP 1996
Reg. No. 557
Recent Clerk
High Court, Jabalpur

(P. T. O.)

(11)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CrA 1685/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1686 of 1996 1686/96

Appellant	**:**	**Bihanu**
	Vs.	
Respondent	**:**	**State of Madhya Pradesh**

CRIMINAL APPEAL NO. 1685 of 1996 1685/96

Appellant	**:**	**Mehattar**
	Vs.	
Respondent	**:**	**State of Madhya Pradesh**

Shri Akhil Mishra learned counsel for the appellants.

Shri U.N. S. Deo GA with Shri M.P.S. Bhatia learned P.L. for the respondent/State.

ORAL JUDGMENT
(06.03.2006)

Per L.C. Bhadoo, J

Criminal Appeals No. 1685/1996 and 1686/1996 filed by appellants Bihanu and Mehattar are arising out of the same judgment and same incident; they are being disposed of by this common judgment.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

2. By these appeals accused/appellants have challenged the legality, propriety and correctness of the judgment of conviction and order of sentence dated 17.9.1996 passed by First Additional Session Judge, Bilaspur in Session Trial No. 28/1995 whereby learned Additional Session Judge after holding the accused/appellants guilty for commission of offence under section 302/34 of the IPC sentenced each of them to undergo imprisonment for life and pay fine of Rs, 200/- each, in default of payment of fine to further undergo RI for one month.

3. Case of the prosecution in brief is that Ram Singh PW-3 lodged a report in police station Korba to the effect that a day before thereto at about 6 p.m. when he was at his residence, the wife of Ganesh namely Sukwarabai came weeping to his house. On inquiry she informed that Mehattar and Bihanu had murdered her husband by attacking with axe, on which he along with Mayaram Kanwar, Dadu Singh and Anandram went to the place of occurrence and saw that body of Ganesh was lying in front of the door of the house of Mehattar. There were cut injuries on both legs of Ganesh and injuries on his head and body were also there. Blood was oozing out of the injuries in both the knees and legs and blood was lying on the ground. There was dispute between the deceased and the accused/appellants regarding partition of land. On inquiry by Panchas Mehattar admitted that he assaulted Ganesh. On further inquiry he said that as the deceased used to abuse him after consuming liquor,

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he along with his son Bihanu committed murder of Ganesh. On receiving this report the Station House Officer registered FIR P-6, left for the scene of occurrence and after giving notice to the Panchas prepared Panchnama P-1 of the body. During police custody accused Mehattar gave memorandum P-2 regarding the place where he had kept the weapon of offence i.e. axe and in pursuance of that memorandum axe was recovered under P-3 at the instance of the accused/appellant. Blood stained and plain soil was taken into possession under P-4. Clothes of the accused were taken into possession under P-5. Body was sent for post mortem examination to Primary Health Centre Korba under P-10 where Dr. B.P. Kanwar PW-4 conducted the post mortem examination on the body of the deceased and submitted the report P-7. Weapon of the offence i.e. axe was sent for chemical examination and after examination report P-8 was received. After completion of the investigation charge sheet was filed against the accused persons in the Court of Judicial Magistrate First Class, Korba who in turn committed the case to the Court of Session Judge, Bilaspur from where learned Additional Session Judge, Bilaspur received the case on transfer for trial.

4. Prosecution has in order to establish the charge against the accused/appellants examined five witnesses. Statements of the accused persons were also recorded under section 313 of the Code of Criminal Procedure in which they denied the material

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appearing against them in the prosecution evidence and pleaded innocence and false implication in the case. They also produced one Setram as a defence witness.

5. Learned Additional Session Judge after hearing the arguments of both the parties convicted and sentenced the accused/appellants as mentioned in paragraph one of this judgment.

6. We have heard Shri Akhil Mishra counsel for accused/appellants and Shri U.N.S. Deo GA and Mr. M.P.S. Bhatia panel lawyer for the respondent/State.

7. Homicidal death of Ganesh is not in dispute.

8. As far as the involvement of accused /appellants in the crime in question is concerned PW-1 Sukwara Bai, wife of the deceased is the eyewitness to the incident who has stated that on the fateful day she and her husband were at their residence. Her husband had gone to the house of Mehattar as the house of Mehattar is adjacent to their house. Her husband first went to the lane from where he went to the house of Mehattar and there they started quarreling on some issue. Thereafter, accused persons felled down her husband, accused Mehattar caught hold of him and Bihanu attacked him with axe as a result of which one leg of her husband was cut in the calf region. He also received injuries on the head on which she raised screams and

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went to her brother-in-law Ram Singh and informed him about the incident. Thereafter, Ram Singh came to the place of the incident and saw the body of Ganesh who had died by that time. Thereafter, Sarpanch was also informed about the incident and then Ram Singh lodged the report. Thereafter police came to the scene of occurrence. In the cross examination this witness has admitted that she is the second wife of Ganesh and first wife is Shanti Bai who is residing in a hut in the forest and her husband was residing with her. She has further stated that at the time of incident there was dark. Her husband was in a drunken condition. She had already cooked the meal. It is correct to say that in connection with partition of land he quarreled and abused the accused persons, however, she does not know that what Ganesh did in the house of Mehattar. She witnessed that the accused persons felled down her husband. She was standing at the gate of her house. PW-2 Bhunendar has stated that he was informed by Mayaram about the quarrel between Ganesh and Mehattar, on which he went on the lane where house of Mehattar is situated and saw that Ganesh was lying dead and there was injury on his leg. House of Mehattar was locked and Mehattar and Bihanu were not in their residence. In the cross examination this witness has stated that he along with Ram Singh went to the police station for lodging the report and at that time Mehattar was also present in the police station, on inquiry he stated that Ganesh came in

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drunken condition to murder him and that is why he murdered Ganesh or else Ganesh would have murdered him. PW-3 Ram Singh is the person who lodged the report. He has stated that on receiving the information he reached the place of occurrence and saw the body of Ganesh lying on the gate of Mehattar and there was injury on his knee and leg and there accused Mehattar admitted that he has murdered Ganesh and he lodged the report P-6. PW-4 Dr. B.P. Kanwar has stated that he conducted the post mortem on the body of the deceased and found that (i) there was incised wound in the size of 2 1/2'x 2 x 2 ½ inch in the upper portion of left leg (ii) incised wound in the size of 5 x 1 ½ x 2 ½ inch below left knee (iii) incised wound in the size of 3 x 2 1/2 x 2 ½ inch on the knee of left leg. Thigh bone of left leg was fractured. He has stated that on account of excessive bleeding and shock the deceased died and his report is P-7.

9. Therefore, in view of the above evidence of PW-1 Sukwarabai, the wife of the deceased and PW-3 Ram Singh before whom the accused Mehattar made extra judicial confession, involvement of the accused Mehattar and Bihanu is established. The involvement of the accused/appellants is further established by the fact that evidence of Sukwarabai is corroborated by the medical evidence. Both the accused persons have common intention to attack the deceased and in furtherance of common intention they attacked the deceased.

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10. Learned counsel for the accused/appellants argued that deceased himself went to the house of accused persons in a drunken condition and started quarreling with them and in the right of private defence they assaulted the deceased. Therefore, it is a case of exceeding the right of private defence and there was no intention to cause death and as such the offence against the appellants does not travel beyond section 304-II of the IPC.

11. On the other hand learned counsel for the respondent/State supported the case impugned judgment of the trial Court.

12. In order to appreciate the arguments advanced by learned counsel for the appellants we have perused the record of the trial Court. It is established that there was a dispute between the brothers regarding partition of the land and on account of which the deceased went to the house of Mehattar in a drunken condition and started abusing them and there was scuffle between the accused persons and the deceased and in that process accused Mehattar caught hold of the deceased and Bihanu picked up an axe from the house and assaulted on the legs of the deceased.

13. In the ordinary course leg is not the vital part of the body and therefore, accused persons attacked the deceased in a sudden quarrel in the heat of passion when deceased came and started

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abusing the accused persons, therefore, in view of above intention to cause death of Ganesh is not established. However, manner in which the accused Bihanu assaulted the deceased on his legs with axe, knowledge that the injuries inflicted to Ganesh can cause his death can be attributed to the accused persons. We are fortified in our view by the judgment of the Apex Court in the matter of **Shivappa Buddappa Kolkar alias Buddappagol Vs. State of Karnataka and others reported in 2004 AIR SCW 5736.** The facts of the said case are that the deceased Hanamant Basappa Byali was doing agricultural operations in his filed close to the village along with PW-1 and PW-2, PW-1 being the brother of the deceased. The trouble started when the appellant and the other accused tried to take the bullock cart through the fields of the deceased so as to reach the fields of first accused. The deceased objected for the cart being taken through his fields especially for the reason that there was crop on the land. On this an altercation ensued. The quarrel went on for some time with abuses hurled against each other. Suddenly the appellant took the axe kept on the cart and hit the deceased Hanamant on the occipital region which resulted in depressed fracture of the skull bone. The other accused also inflicted injuries with clubs resulting in fracture of the bones of left forearm and a lacerated wound on the outer aspect of the thigh and on the facts of the case the Hon'ble Apex Court held that the accused during quarrel suddenly took

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	axe and gave solitary blow on back of head of the deceased resulting into his death and there was no premeditation or pre-arranged plan to attack the deceased, accused could be imputed with knowledge that the injury inflicted by him was likely to cause death. 14. Thus in view of the foregoing reasons, we are of the considered opinion that the judgment of the trial Court convicting the accused/appellants under section 302/34 of the IPC and sentencing them to undergo imprisonment for life and pay fine of Rs. 200/- each, cannot be sustained. 15. In the result, the appeals partly succeed. Conviction under section 302/34 of the IPC and resultant sentence imposed under that section are set aside instead thereof the appellants are convicted under section 304-II of the IPC and sentenced to undergo RI for 10 years. It is stated that the appellants are in jail since 11.12.1994 which is not disputed by the counsel for the State; therefore, they have already undergone the sentence imposed on them. They be set at liberty forthwith if not required in any other case. Sd/- L.C. Bhadoo Judge	Sd/- Dhirendra Mishra Judge

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	DIVISION BENCH: **HON'BLE SHRI L.C.BHADOO** **& HON'BLE SHRI DHIRENDRA MISHRA, JJ** **22.03.2006** Shri Akhil Mishra, learned counsel for the appellants. Shri U.N.S. Deo learned G.A. with Shri M.P.S.Bhatia P.L. for the State. The perusal of the judgment dated 06.03.2006 shows that inadvertently the appeal number of appeal filed by Bihanu has been typed out as 1685/96 whereas it should have been1686/96 and the appeal number of appeal filed by Mehattar has been incorrectly typed as 1686/96 instead of 1685/96. Accordingly the correction is carried out in the Court itself in the main judgment. Sd/- L.C. Bhadoo Judge	Sd/- Dhirendra Mishra Judge